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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/594,871

09/28/2006

Walthard Vilser

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4625

26418

7590

06/17/2009

REED SMITH, LLP

ATTN: PATENT RECORDS DEPARTMENT

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NEW YORK, NY 10022-7650

EXAMINER

BERHANU, ETSUB D

ART UNIT

PAPER NUMBER

3768

MAIL DATE

DELIVERY MODE

06/17/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/594,871	Applicant(s) VILSER ET AL.	
	Examiner ETSUB D. BERHANU	Art Unit 3768	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25,28-40,42,43 and 45 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 25,28-40,42,43 and 45 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

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DETAILED ACTION

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 25, 28-40, 42, 43 and 45 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The amendment to claim 25 requires the simultaneous illumination of blood vessels and their vessel-free environment exclusively by wavelengths used for subsequent data gathering. There is no disclosure in the originally filed Specification stating that the blood vessels and their vessel-free environment are illuminated exclusively with wavelengths used for subsequent data gathering. Despite Applicant's assertion that paragraph [0039] of the Specification recites letting only those wavelengths that correspond to the channels of a color camera 4 pass as an illuminating beam, paragraph [0039] merely indicates that a filter is used so that a measurement wavelength and reference wavelength are generated. There is no indication that the blood vessels and their vessel-free environment are illuminated by only these two wavelengths, or that the measurement wavelength and reference wavelength that are generated do not comprise a narrow band of wavelengths.

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Claim Rejections - 35 USC § 102

4. Claims 25, 28-31, 33, 37 and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Beach et al.'017 (previously cited).

See the rejection set forth in paragraph 4 of the Office Action mailed out 20 October 2008.

Claim Rejections - 35 USC § 103

5. Claims 38 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beach et al.'017, as applied to claim 37, further in view of Faubert et al.'247 (previously cited).

See the rejection set forth in paragraph 6 of the previous Office Action.

6. Claims 42 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beach et al.'017, as applied to claim 25, further in view of Cabib et al.'853 (previously cited).

See the rejection set forth in paragraph 7 of the previous Office Action.

Response to Arguments

7. Applicant's arguments, see page 8 of the Remarks, filed 19 February 2009, with respect to claims 32, 34-36 and 45 have been fully considered and are persuasive. The rejection of claims 32, 34-36 and 45 has been withdrawn; however a new rejection based on 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement, has been made.

8. Regarding the remaining claims, Applicant's arguments filed 19 February 2009 have been fully considered but they are not persuasive. Applicant argues on page 6 of the Remarks that Beach fails to disclose illuminating simultaneously the blood vessels and their vessel-free environment exclusively by the measurement wavelength and reference wavelength. The Examiner notes that page 15, lines 11-13 of Beach explicitly discloses that a broadband illumination filter is used to eliminate wavelengths above and below the wavelengths used for subsequent data gathering from the flash of light illuminated onto the

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patient's eye. Therefore, only the wavelengths used for gathering data are illuminated onto the blood vessels and their vessel-free environment. Applicant argues on page 7 of the Remarks that Beach does not disclose determination of the slope and linear term of a linear function by reading over a plurality of blood vessels, wherein the plurality of blood vessels are in the eye of a particular patient. Examiner notes that the claims as disclosed do not recite that the plurality of blood vessels are within the eye of a particular patient. Beach meets the recitation in the claim of "wherein the slope and linear term of the function are determined empirically from readings at a plurality of blood vessels" since the slope and linear term of Beach are determined empirically from readings from the blood vessels of several individuals, which is a plurality of blood vessels. Applicant argues on pages 7 and 8 of the Remarks that Beach discloses using correctives that are empirically determined, the correctives comprising a linear function of either the vessel diameter or pigmentation, but not both the vessel diameter or pigmentation. Examiner notes that Beach discloses correctives for both the vessel diameter and pigmentation in the sections describing the Pigmentation Correction Method (specifically page 26, lines 1-4) and the Intravascular Reflectance Method (specifically page 28, lines 22-23). Beach further discloses correcting for vessel diameter and pigmentation on page 32, lines 10-13. Regarding claim 33, Applicant argues on page 8 of the Remarks that Beach fails to disclose determining the type of blood vessel automatically by the definition of a threshold value derived from reflection ratios. It is noted that claim 33 does not require the blood vessels to be determined automatically. Claim 33 discloses that the blood vessels can be detected manually, which is disclosed in Beach. For these reasons, the rejection of claims 25, 28-31, 33, 37-40, 42 and 43 are upheld.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ETSUB D. BERHANU whose telephone number is (571)272-6563. The examiner can normally be reached on Monday - Friday (7:00 - 3:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le can be reached on (571)272-0823. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eric F Winakur/
Primary Examiner, Art Unit 3768

EDB